

1 MICHAEL LEHNERS, ESQ.
2 429 Marsh Ave.
3 Reno, Nevada 89509
4 Nevada Bar Number 003331
5 (775) 786-1695
6 email michaellehners@yahoo.com
7 Attorney for Creditor
8 McGinley & Associates
9

2cf 6/20/11

7 UNITED STATES BANKRUPTCY COURT

8 DISTRICT OF NEVADA

9 oOo

10 BK-N- 11-51521

11 CHAPTER 11

12 Hearing Date: OST Pending
and Time: _____

13 Mtn No. _____

14 Est Time: _____

13 IN RE

14 V-R PROPERTY MANAGEMENT,

15 Debtor(s).
16 _____/

MOTION TO APPOINT TRUSTEE OR IN
THE ALTERNATIVE TO CONVERT TO
CHAPTER SEVEN

17 COMES NOW McGinley & Associates (herein "McGinley") by and
18 through undersigned counsel and files the following Motion to Appoint a
19 Trustee or in the Alternative to Convert to Chapter Seven. This motion is
20 made and based upon the Debtor's refusal to comply with NDEP
21 directives to clean contaminated property, and his declaration at the
22 §341 meeting of creditors hearing that he had no plans to comply in the
23 future.

24 MEMORANDUM OF POINTS AND AUTHORITIES

25 The Debtor operates four gas stations. Two of them are in Carson
26 City. One is on North Carson Street. The other is on South Carson Street.
27 Both are contaminated properties. NAC 445A.22695 imposes a duty
28 upon landowners to take any action necessary to immediately abate and

1 mitigate hazards caused by a release of contaminants. This fund is
2 administered by the Nevada Department of Environmental Protection
3 (NDEP).

4 Fortunately, there is a petroleum fund which can, under some
5 circumstances, pay for remediation. The petroleum fund provides one
6 million dollar coverage, per underground storage tank system, minus a
7 10% co-pay by the landowner¹. This coverage applies to each leaking
8 underground storage system. Therefore, a site is eligible for more than
9 one million dollars of coverage if more there is more than one leaking
10 UST system.

11 **1. The 2152 N. North Carson Property.**

12 On February 26, 2009 NDEP issued findings and an order directing
13 the Debtor to commence cleanup and monitoring operations. A copy of
14 this Order has been attached to the Affidavit of Joseph McGinley as
15 Exhibit "1". The findings specify in detail the efforts of NDEP to compel
16 the Debtor to commence clean up activities.

17 The Debtor applied for petroleum fund coverage. On December 1,
18 2008 NDEP sent the Debtor a letter denying coverage. A copy of this
19 letter has been attached to the Affidavit of Joseph McGinley as Exhibit
20 "2". The letter confirmed the property had contaminants which are
21 above state action levels.

22 The Debtor ignored the order. On March 3, 2009 NDEP sent out its
23 notice of noncompliance. A copy of this letter has been attached to the
24 Affidavit of Joseph McGinley as Exhibit "3".

25 A copy of the notice of non-compliance was sent to McGinley who
26 had filed the application for petroleum fund coverage on behalf of the
27

28 ¹ The Debtor has three underground storage tank systems so he is entitled to
coverage for up to three million dollars.

1 Debtor. On April 7, 2009 McGinley sent the Debtor a letter requesting the
2 Debtor contact him so he could proceed with obtaining compliance with
3 the NDEP order. A copy of that letter has been attached to the Affidavit
4 of Joseph McGinley as Exhibit "4". On May 14, 2009 NDEP sent the Debtor
5 another notice of non-compliance. Please see Exhibit "5" to the Affidavit
6 of Joseph McGinley.

7 At the June 13, 2011 §341 hearing the Debtor acknowledged the
8 North Carson Property was contaminated. He said he had taken no
9 actions to clean the property since December of 2008 which is when he
10 was denied for petroleum fund coverage. He also stated he had no
11 specific plan to clean up the site.

12 The estimated costs to clean up this facility are approximately
13 \$686,000.00. NDEP obtained a default judgment against the Debtor in
14 State Court. A copy of that judgment and NDEP's application for default
15 judgment are attached to this Motion as Exhibit "1".

16 The application for default sets forth the factual details regarding
17 the contaminated property and how the Debtor has refused to honor his
18 statutory duties to clean it up. Of the 1.6 million, \$28,547.14 will
19 reimburse NDEP for paying a contractor to work on the property. The
20 sum of \$686,296.01 will go toward the estimated costs of cleaning up the
21 property. The balance will be used as NDEP sees fit.

22 **2. The 1360 S. Carson Property.**

23 This site is also contaminated. However, McGinley was able to get
24 the Debtor petroleum fund coverage in the amount of three million
25 dollars. In 2005 a remediation system was installed on the property to
26 clean up the site. The system ran until December of 2008 at which point
27 the electricity to remediation system was turned off by the utility
28

1 company due to Debtor's failure to pay the electricity bill for the
2 remediation system.

3 At the time the electricity was turned off the chemical
4 concentrations in the on site monitoring wells were below the regulatory
5 clean up levels; therefore, the NDEP allowed the system to remain off
6 pending verification groundwater monitoring.

7 NDEP regulations require groundwater to be monitored for a
8 minimum of one year following cessation of active remediation.
9 Although chemical concentrations in the on site wells had declined to
10 below the regulatory action levels, concentrations in some of the off site
11 monitoring wells exceeded the regulatory action level. As a result, NDEP
12 required additional assessment activities to be conducted off site.

13 Monitoring revealed chemical concentrations in one of the on site
14 monitoring wells had increased above actionable levels. Therefore the
15 NDEP required continuation of verification of groundwater monitoring
16 and potential reactivation of the remediation system. This was set forth
17 in a June 12, 2009 letter by NDEP. A copy has been attached to the
18 Affidavit of Joseph McGinley as Exhibit "6".

19 While McGinley was willing to do what was required by the NDEP
20 on this site, the Debtor failed to sign the required documentation to
21 continue verification groundwater monitoring.

22 McGinley made several attempts to contact the Debtor to obtain
23 the required signatures and the authorization to proceed with the
24 activities requested by the NDEP. On August 24, 2009 NDEP sent the
25 Debtor a letter which referenced this fact. A copy has been attached to
26 the Affidavit of Joseph McGinley as Exhibit "7".
27
28

1 As a result of the Debtor's refusal to communicate or sign the
2 required NDEP documentation, all work on the South Carson property
3 was terminated in mid-2009.

4 The remediation equipment is still present on the property and all
5 of the on site and off site monitoring wells are in place. The cost to
6 complete assessment, remediation and site closure activities is estimated
7 to be \$100,000.00 to \$200,000.00.

8 Argument

9 28 U.S.C. §959(b) provides as follows:

10 "Except as provided in section 1166 of title 11, a trustee,
11 receiver or manager appointed in any cause pending in any
12 court of the United States, including a debtor in possession,
13 shall manage and operate the property in his possession as
14 such trustee, receiver or manager according to the
15 requirements of the valid laws of the State in which such
16 property is situated, in the same manner that the owner or
17 possessor thereof would be bound to do if in possession
18 thereof."

19 Emphasis supplied

20 In Nevada a landowner has an affirmative duty to clean up
21 contaminated property. NAC 445A.22695. Moreover, the automatic stay
22 does not apply to NDEP enforcement actions with the exception of
23 enforcing monetary judgments. 11 U.S.C. §362(b)(4).

24 A Debtor's failure to comply with state laws concerning
25 environmental contamination is grounds for dismissal. In re Commercial
26 Oil Service, Inc. 58 B.R. 311 (Bkrtcy N.D. Ohio 1986); In re Charles George
27 Land Reclamation Trust, 30 B.R. 918, (Bkrtcy. D. Mass. 1983).

28 At the §341 hearing, the Debtor indicated not only that he has not
done anything to clean up the properties since December of 2008, but
that he has no plans to do so in the future. The testimony concerning the

1 Debtor's operations and expenses revealed it cannot afford to pay for the
2 remediation costs, and that reorganization will be based upon a sale of
3 the Carson properties.

4 The problem with this plan is the properties cannot be sold in their
5 contaminated condition. Therefore, there is simply no way in which the
6 Debtor can reorganize. The only sensible solution is to have a trustee
7 appointed who will work with the NDEP. This way petroleum fund
8 coverage can be reapplied for, and the Trustee can prepare the
9 necessary forms. Once the property has been cleaned, it can be sold.

10 11 U.S.C. §1104 provides in relevant part as follows:

11 At any time after the commencement of the case but before
12 confirmation of a plan, on request of a party in interest or
13 the United States trustee, and after notice and a hearing, the
14 court shall order the appointment of a trustee--

15 (1) for cause, including fraud, dishonesty, incompetence,
16 or gross mismanagement of the affairs of the debtor by
17 current management, either before or after the
18 commencement of the case, or similar cause, but not
including the number of holders of securities of the debtor
or the amount of assets or liabilities of the debtor; or

19 (2) if such appointment is in the interests of creditors, any
20 equity security holders, and other interests of the estate,
21 without regard to the number of holders of securities of the
debtor or the amount of assets or liabilities of the debtor.

22 In the case at bar there is cause. The Debtor will not comply with
23 his duties under 28 U.S.C. §959. This directly affects the creditors since
24 the only way in which they will be paid is to have the property first
25 cleaned and then sold.

26 11 U.S.C. §1112(b) authorizes this court to dismiss or convert for
27 cause. The same reasons as set forth above are applicable to §1112(b).
28 At the §341 hearing, the State Attorney General's office made an

1 appearance and questioned the Debtor. The Deputy Attorney General
2 asked if the Debtor was aware of the fact that there were 275 drinking
3 wells within a mile of the underground contamination plume. He replied
4 that he was not. Some of these wells are in the path of the spreading
5 plume.

6 Most motions to convert on shortened time are filed due to a risk
7 of non payment or destruction of collateral. The stakes are much more
8 here. If this Debtor is allowed to remain in operation, there will be a
9 possibility of the plume migrating and injuring landowners. For that
10 reason, a Trustee must be appointed at the soonest opportunity.
11

12 Dated: This 20 day of June, 2011
13

14
15 By: 

16 Michael Lehnert, Esq.
17 429 Marsh Ave.
18 Reno, Nevada 89509
19 Nevada Bar Number 003331
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21
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Exhibit 1

Exhibit 1

1 CATHERINE CORTEZ MASTO
 2 Nevada Attorney General
 3 Nhu Q. Nguyen
 4 Sr. Deputy Attorney General
 5 Nevada Bar No. 7844
 6 100 North Carson Street
 7 Carson City, Nevada 89701-4717
 8 Tele: (775) 684-1232
 9 FAX: (775) 684-1103
 10 Attorneys for Plaintiff, State of Nevada,
 11 Division of Environmental Protection

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 ALAN GLOVER
 C. COOPER
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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR CARSON CITY

STATE OF NEVADA, DEPARTMENT OF
 CONSERVATION AND NATURAL
 RESOURCES, DIVISION OF
 ENVIRONMENTAL PROTECTION,

Case No. 09-OC-00336 1B
 Dept. No. 1

Plaintiff,

v.

MOHAMMAD AHMAD, aka MOHAMMED
 AHMED, aka MOHAMMED AHMAD, aka
 MOHAMMAD AHMAN, individually, V-R
 PROPERTY MANAGEMENT, INC., A
 NEVADA CORPORATION dba EAGLE
 GAS OF CARSON CITY, DOES 1 - 10,
 ABC COMPANIES 11 - 15, and XYZ
 CORPORATIONS 16 - 20,

Defendants.

APPLICATION FOR DEFAULT JUDGMENT

Plaintiff State of Nevada, Department of Conservation and Natural Resources, Division
 of Environmental Protection (NDEP), by and through its counsel, Catherine Cortez Masto,
 Attorney General, and Nhu Q. Nguyen, Senior Deputy Attorney General, hereby requests this
 honorable Court for an order granting judgment by default. This Application for Default
 Judgment is made and based upon NRCP 55 and F.J.D.C.R. 20, all pleadings on file and the
 attached Affidavit of Arthur Gravenstein.

1 On August 17, 2009, NDEP filed the Complaint for Injunctive and Other Relief. On
 2 September 8, 2009, Defendant was served with the Summons and Complaint. On
 3 September 30, 2009, the default of Defendant was entered by the Clerk. Defendant has
 4 failed to answer or otherwise respond to this lawsuit. Defendant also has not taken any
 5 corrective actions or any steps toward remediation of the site. Accordingly, NDEP respectfully
 6 requests this Court grant it judgment by default so that corrective action and remediation may
 7 commence on the site.

8 DATED this 8th day of June, 2010.

9 CATHERINE CORTEZ MASTO
 10 Attorney General

11 By:

12 NHU Q. NGUYEN
 13 Senior Deputy Attorney General
 14 Nevada State Bar No. 7844
 15 100 North Carson Street
 16 Carson City, Nevada 89701-4717
 17 Tele: (775) 684-1232
 18 *Attorneys for Plaintiff, State of Nevada,*
 19 *Conservation & Natural Resources,*
 20 *Division of Environmental Protection*


Attorney General's Office
 100 N. Carson Street
 Carson City, Nevada 89701-4717

CERTIFICATE OF MAILING

I, Rosiland M. Hooper, certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 8th day of June, 2010, I deposited for mailing at Carson City, Nevada, in a postage-prepaid envelope, a true and correct copy of the foregoing **APPLICATION FOR DEFAULT JUDGMENT**, addressed as follows:

Mohammad Ahmad,
aka Mohammed Ahmed,
aka Mohammed Ahmad,
aka Mohammad Ahman, Registered Agent
1173 Monte Rosa
Carson City, Nevada 89701

V-R Property Management
c/o Mohammad Ahmad, Registered Agent
2152 North Carson Street
Carson City, Nevada 89706


Rosiland M. Hooper, an employee of the
Office of the Nevada Attorney General

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

**AFFIDAVIT OF ARTHUR GRAVENSTEIN IN SUPPORT OF
EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

STATE OF NEVADA

CARSON CITY

} ss.

I, ARTHUR GRAVENSTEIN, do hereby swear under penalty of perjury that the assertions of this affidavit are true.

1. I am employed by the Nevada Division of Environmental Protection ("NDEP"). I was the supervisor of the Underground Storage Tank Branch in the Bureau of Corrective Action until May 20, 2010. Currently I am the supervisor of the Solid Waste Branch, Bureau of Waste Management.

2. I am assigned as the Project Manager overseeing the enforcement action against Mohammad Ahmad, aka Mohammed Ahmed, aka Mohammed Ahmad, aka Mohammad Ahman, individually, V-R Property Management, Inc., a Nevada Corporation dba Eagle Gas of Carson City ("Defendant").

3. The Defendant began assessment activities relating to contaminated soil and groundwater on his properties in November 2007, but has failed to complete the required assessment activities.

4. The Defendant drilled six monitoring wells in October 2008, but has failed to provide NDEP with the required reports of quarterly monitoring.

5. The Defendant has failed to conduct any corrective action necessary to address the contamination of soil and groundwater at the site.

6. Prior to commencing this lawsuit, NDEP attempted to communicate with Defendant the need for him to take corrective action by sending Defendant multiple certified letters. However, since November 17, 2008, Defendant has not responded to any of the letters requesting information and has not otherwise communicated with NDEP. Additionally, on November 24, 2008, Defendant failed to authorize his Certified Environmental Managers from implementing the recommendations based on the Result of Environmental Site Assessment Activities and Work Plan for Additional ESA.

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Carson City, Nevada 89701-4717

1 7. NDEP has not received any documentation from Defendant indicating
2 compliance with the Notice of Alleged Violation and Order issued by NDEP on February 26,
3 2009.

4 8. The Defendant's inaction, in violation of law, resulted in NDEP's inability to
5 determine the extent of groundwater contamination at the site without a thorough inspection.

6 9. On September 16, 2009, the Court granted NDEP access onto Defendant's
7 property to conduct all necessary assessments, monitoring, and corrective action to remediate
8 soil and groundwater contamination caused by Defendant's release and/or spill of gasoline.

9 10. From September 10, 2009, through January 19, 2010, NDEP and/or its
10 contractor, Broadbent and Associates, Inc., ("Broadbent") entered Defendant's property and
11 conducted assessments and/or remediation work on the site. Thus far, the costs paid to
12 Broadbent for the assessments are \$28,547.14.

13 11. According to the assessments of NDEP and Broadbent, the corrective action
14 required to remediate soil and groundwater at the site will result in costs of approximately
15 \$686,296.01.

16 12. On July 11, 2007, NDEP received notice that Defendant unlawfully discharged a
17 pollutant without a permit in violation of NRS 445A.465. The violation is ongoing. Pursuant to
18 NRS 445A.700, NDEP is imposing a civil fine of up to \$25,000 for each day of the violation and
19 seeks \$500,000 for this ongoing violation.

20 13. On July 11, 2007, NDEP received notice that Defendant unlawfully discharged a
21 pollutant without a permit in violation of NRS 445A.475. The violation is ongoing. Pursuant to
22 NRS 445A.700, NDEP is imposing a civil fine of up to \$25,000 for each day of the violation and
23 seeks \$500,000 for this ongoing violation.

24 14. On January 7, 2009, Defendant failed to provide an additional assessment and
25 corrective action plan in violation of NRS 459.850. The violation is ongoing. Pursuant to
26 NRS 459.856, NDEP is imposing a civil fine of up to \$5,000 for each day of the violation and
27 seeks \$200,000 for this ongoing violation.

28 ///

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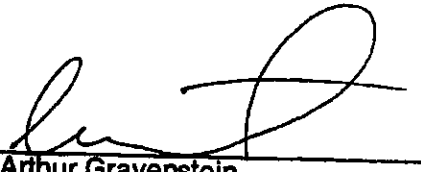
1 15. On January 7, 2009, Defendant failed to install monitoring wells as approved by
2 NDEP in violation of NRS 459.850. The violation is ongoing. Pursuant to NRS 459.856, NDEP
3 is imposing a civil fine of up to \$5,000 for each day of the violation and seeks \$200,000 for this
4 ongoing violation.

5 16. On January 7, 2009, Defendant failed to take corrective action to address
6 excessive dissolved product action levels in groundwater and/or surface water in violation of
7 NRS 459.852. The violation is ongoing. Pursuant to NRS 459.856, NDEP is imposing a civil
8 fine of up to \$5,000 for each day of the violation and seeks \$200,000 for this ongoing violation.

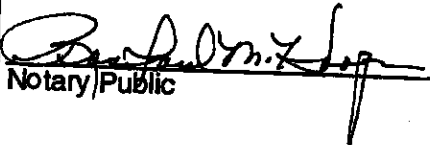
9 17. In total, NDEP seeks \$1.6 million dollars in civil fines and administrative penalties
10 to defray the costs to address and prevent further contamination of soil and groundwater and
11 the resulting threat to the public health.

12 18. Because Defendant has made no appearance in this civil lawsuit and has not
13 responded to any requests for information from NDEP, NDEP needs to take immediate
14 corrective action to address and prevent further contamination of soil and groundwater and the
15 resulting threat to the public health.

16 DATED this 8 day of June, 2010.

17
18
19 
20 Arthur Gravenstein

21 SIGNED AND SWORN to before
22 me by Arthur Gravenstein, this
23 8 day of June, 2010.

24 
25 Notary Public



26 ROSILAND M. HOOPER
27 NOTARY PUBLIC
28 STATE OF NEVADA
No.07-2714-3 My Appt. Exp. March 20, 2011

(place notary stamp above)

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

1 CATHERINE CORTEZ MASTO
 Nevada Attorney General
 2 Nhu Q. Nguyen
 Sr. Deputy Attorney General
 3 Nevada Bar No. 7844
 100 North Carson Street
 4 Carson City, Nevada 89701-4717
 Tele: (775) 684-1232
 5 FAX: (775) 684-1103
 Attorneys for Plaintiff, State of Nevada,
 6 Department of Conservation

7
 8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
 9 **IN AND FOR CARSON CITY**

10 STATE OF NEVADA, DEPARTMENT OF
 CONSERVATION AND NATURAL
 11 RESOURCES, DIVISION OF
 ENVIRONMENTAL PROTECTION,

Case No. 09-OC-00336 1B

Dept. No. I

12 Plaintiff,

13 v.

14 MOHAMMAD AHMAD, aka MOHAMMED
 15 AHMED, aka MOHAMMED AHMAD, aka
 MOHAMMAD AHMAN, individually, V-R
 16 PROPERTY MANAGEMENT, INC., A
 NEVADA CORPORATION dba EAGLE
 17 GAS OF CARSON CITY, DOES 1 - 10,
 18 ABC COMPANIES 11 - 15, and XYZ
 CORPORATIONS 16 - 20,

19 Defendants.
 20

21 **DEFAULT JUDGMENT AND DAMAGES**

22 Upon review of the pleadings and papers on file herein and the Application for Default
 23 Judgment and its accompanying Affidavit, the Court finds:

24 In this action, the Defendant, Mohammad Ahmad, aka Mohammed Ahmed, aka
 25 Mohammed Ahmad, aka Mohammad Ahman, individually, V-R Property Management, Inc.,
 26 a Nevada Corporation dba Eagle Gas of Carson City, Does 1-10, ABC Companies 11-15,
 27 and XYZ Corporations 16-20, was regularly served with a Summons and Complaint on
 28 September 8, 2009. Defendant did not file an answer or otherwise respond to the Complaint.

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1 The default of Defendant was filed by the Clerk on September 30, 2009. Upon the
 2 Application for Judgment by Default filed by Plaintiff, and Defendant having made no
 3 opposition or otherwise responded to Plaintiff's request for a judgment by default, this Court
 4 being fully apprised of the premises and good cause appearing, orders as follows:

5 IT IS HEREBY ORDERED that judgment is hereby entered against Defendant,
 6 Mohammad Ahmad, aka Mohammed Ahmed, aka Mohammed Ahmad, aka Mohammad
 7 Ahman, individually, V-R Property Management, Inc., a Nevada Corporation dba Eagle Gas of
 8 Carson City pursuant to the prayer of Plaintiff's Complaint.

9 Wherefore, by virtue of the law and by reason of the premises aforesaid,

10 IT IS ORDERED, ADJUDGED and DECREED that Plaintiff recover of and from
 11 Defendant Mohammad Ahmad, aka Mohammed Ahmed, aka Mohammed Ahmad, aka
 12 Mohammad Ahman, individually, V-R Property Management, Inc., a Nevada Corporation dba
 13 Eagle Gas of Carson City, Eagle Gas, as follows:

14 The total judgment of \$1.6 million dollars in civil penalties and administrative fines of
 15 which: (a) \$28,547.14 will go to reimburse NDEP for payments for work completed by a
 16 contractor on the site from September 9, 2009, through January 19, 2010; (b) \$686,296.01 will
 17 go toward costs for the required additional remediation work to prevent further contamination of
 18 soil and groundwater; and (c) the resulting \$885,156.85 shall be used by NDEP as it sees fit

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 Carson City, Nevada 89701-4717

1 and NDEP may use these funds to conduct additional work on the site, together with interest
2 accruing on said total amount at the legal rate of 7% per annum from September 8, 2009, the
3 date of service of the Summons and Complaint upon the Defendant, until paid in full.

4 JUDGMENT ENTERED this ____ day of _____, 2010.
5
6

7 Submitted by:
8 CATHERINE CORTEZ MASTO
9 Attorney General

DISTRICT COURT JUDGE

10 By:

11 NHU Q. NGUYEN
12 Senior Deputy Attorney General
13 Nevada State Bar No. 7844
14 100 North Carson Street
15 Carson City, Nevada 89701-4717
16 Tele: (775) 684-1232
17 *Attorneys for Plaintiff, State of Nevada,*
18 *Conservation and Natural Resources,*
19 *Division of Environmental Protection*

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717